BEFORE THE KANSAS WORKERS COMPENSATION APPEALS BOARD

MARIA M. VILLEGAS)
Claimant)
V.)
) Docket No. 1,056,517
CREEKSTONE FARMS PREMIUM BEEF)
Respondent	
AND)
)
LIBERTY INSURANCE CORP.)
Insurance Carrier)

<u>ORDER</u>

Claimant requested review of the May 31, 2016, Post-Award Medical Award by Administrative Law Judge (ALJ) Gary K. Jones.

APPEARANCES

Robert R. Lee, of Wichita, Kansas, appeared for the claimant. John A. Pazell, of Kansas City, Missouri, appeared for respondent and its insurance carrier (respondent).

RECORD AND STIPULATIONS

The Board has considered the record and adopted the stipulations listed in the Award.

Issues

A settlement hearing was held on July 31, 2015, at which time claimant settled her claim with a date of accident of May 26, 2011. The terms of the settlement were as follows: claimant was paid \$53,347.82 in temporary total disability; \$51,062.05 was incurred in medical; and \$69,442.94 was paid as full and final settlement, with future medical left open.

Claimant filed Post-Award Medical applications on August 18, 2015, and November 18, 2015, requesting authorization for injections and medication for claimant's neck. A Post-Award Medical hearing was held on February 9, 2016, to address claimant's requests for medical treatment for her cervical spine.

The ALJ authorized treatment for claimant's neck pain resulting from her shoulder injuries, but denied the injections suggested by board certified physical medicine and rehabilitation specialist, Rodrigo Cayme, M.D. The ALJ found the evidence indicates the work injury is not the prevailing factor for the cervical injections being provided by Dr. Cayme. The ALJ also found the evidence shows that some component of claimant's current neck pain is likely the result of the work accident and agreed with Dr. Hufford that claimant's neck pain was attributed to referred pain from the primary shoulder injuries. There was no separate injury to claimant's cervical spine as a result of her work activities. However, at least some of her neck pain is the result of the primary injury to the shoulders and claimant was found entitled to treatment for her neck pain, to that limited extent.

Claimant appeals, arguing the Board should reverse the ALJ and authorize Dr. Cayme to provide medication and injection therapy to claimant's cervical spine as he deems necessary. Claimant contends it is impossible for a doctor, who is treating a soft tissue injury, to determine, on a particular day, if pain is caused by myofascial injury from degeneration or from pain which radiates from a cumulative trauma disorder to the shoulders.

Respondent argues the ALJ should be affirmed.

FINDINGS OF FACT

Claimant began working for respondent in February 2004. Claimant worked in one department for three weeks and then another for six months before moving into the short rib trimmer position. Claimant worked as a short rib trimmer from June 2009 to June 14, 2011. The physical duties of this job caused injury to claimant's shoulders, mostly the right, and to her arms. Claimant reported this to her supervisor and saw the plant physician, Roderick Heger, D.O., on May 26, 2011, with right arm numbness and decreased strength and numbness at her shoulder and down her right hand. Claimant reported this had been occurring for 3 weeks. Dr. Heger diagnosed thoracic outlet syndrome and recommended an EMG/NCS and physical therapy.

Claimant met with Bernard F. Hearon, M.D., at respondent's request on June 9, 2011, for evaluation of a right upper extremity problem, with symptoms from June 2009. The doctor advised claimant's reaching activities and repetitive meat cutting at work were aggravating her upper extremity problems. Dr. Hearon opined that the symptoms in claimant's neck, which had been bothering her for about six months, appeared to be more chronic in nature and not related to her work.

Claimant was given restrictions of no overhead work and no lifting over ten pounds. The report was sent to respondent by the doctor's office. At some point, it was determined claimant's problems were not work-related and claimant was sent home. Claimant last worked for respondent on June 16, 2011, which was the day respondent received the

report that claimant's neck condition was not work-related. Claimant's last day of active work for respondent was June 13, 2011.

Claimant acknowledges she was diagnosed with diabetic neuropathy in her legs and feet on February 16, 2011, and admitted she had similar pain in her arms and hands. Claimant did not receive any treatment for her shoulders, hands, arms or neck until May 2011. Claimant testified her arms started bothering her the same time she complained about her shoulders.

Claimant met with Pedro A. Murati, M.D., on August 3, 2011, for an examination, at the request of her attorney. Her complaints included bilateral shoulder pain, starting in 2009, with the right being worse, and pain in both arms and her neck six or seven months before the examination. Claimant denied any significant injuries to her neck, shoulders or arms prior to her work-related injuries with respondent from June 6, 2009, through May 26, 2011.

Claimant met with George A. Fluter, M.D., on November 21, 2011, for a court-ordered evaluation and treatment. Claimant indicated she had pain in the back part of her head, neck/upper back, shoulders, arms, and hands. She described the pain as sharp and severe. Claimant also reported being confined to bed several times a week due to pain. Her pain is constant with no pattern to it. At the time of this visit, claimant had not been treated with any kind of injections. Dr. Fluter noted claimant's main complaint was the pain her shoulders radiating into her hands.

Dr. Fluter examined claimant and assessed her with neck/upper back pain; shoulder/upper extremity pain; overuse/cumulative trauma disorder affecting the neck/upper and upper extremities; probable shoulder impingement/tendonitis/bursitis; possible bilateral medial and lateral epicondylitis; possible bilateral carpal tunnel syndrome; probable myofascial pain affecting the neck/upper back, upper shoulders and scapular stabilizers. Dr. Fluter reviewed x-rays of the cervical spine from June 14, 2011, and November 11, 2011, and noted they were normal. The November x-rays were also read as displaying a slight narrowing of the C5-6 space indicating mild C5-6 degenerative disc disease without other evidence of an acute cervical spinal abnormality. A treatment plan was developed, including pain medication and physical therapy, and claimant was asked to return in six weeks.

Claimant met with Dr. Fluter for followup on January 4, 2012, and was showing some improvement. Dr. Fluter opted to continue with the treatment plan. On January 31, 2012, claimant had not yet reached all of her treatment goals and claimant continued with treatment through 2012 and into 2013.

On June 19, 2013, claimant continued to have problems with her shoulders. An MRI/arthrogram showed tears of the rotator cuff and labrum. Cervical range of motion was within functional limits. Further evaluation was recommended for the shoulders. Claimant

had right shoulder surgery on August 7, 2013, consisting of a right shoulder arthroscopy, subacromial decompression, biceps tenodesis and rotator cuff repair, under the care of Daniel Prohaska, M.D. On October 3, 2013, claimant complained of right shoulder pain radiating up into the neck and head and down into her right arm when doing exercises. It was unclear if claimant would agree to surgery on the left shoulder. On November 14, 2013, claimant reported therapy provided some benefit, post surgery on the right shoulder. She continued with treatment with no plan made for the left shoulder.

On January 14, 2014, claimant completed physical therapy and it was recommended she continue with current medications.

On June 4, 2014, Dr. Fluter assessed claimant's conditions as: neck/upper back pain; shoulder/upper extremity pain; overuse/cumulative trauma disorder affecting the neck/upper and upper extremities; bilateral shoulder impingement/tendonitis/bursitis; right shoulder internal derangement; status post right shoulder arthroscopy; possible left shoulder internal derangement; bilateral medial and lateral epicondylitis; bilateral carpal tunnel syndrome; probable myofascial pain affecting the neck/upper back, upper shoulders and scapular stabilizers. He opined, to a reasonable degree of medical probability, there is a causal/contributory relationship between claimant's current condition and the repetitive work-related activities involving the upper extremities and their sequelae. He felt claimant's work activities are the prevailing factor for claimant's need for medical evaluation/treatment and impairment/disability. He felt claimant would likely need future medical care, including treatment for her cervical spine.

Dr. Fluter assigned claimant a combined 32 percent impairment for pain affecting the neck/upper back, both shoulders and right arm. He associated 5 percent of this impairment to the cervical region. Dr. Fluter considered claimant's neck complaints to be minor. Claimant's cervical range of motion was limited in all planes at the time of this examination. Permanent restrictions were assigned.

On cross-examination, Dr. Fluter acknowledged at no time did he ever have an MRI of claimant's cervical spine performed. Two sets of x-rays reviewed by Dr. Fluter were read as normal, with only slight disc space narrowing noted. No treatment of claimant's cervical spine was ever provided by Dr. Fluter.

Claimant met with David Hufford, M.D., for a court-ordered independent medical examination (IME) on February 26, 2015. Dr. Hufford noted claimant's continued pain in her neck, both shoulders, both elbows, both wrists and both hands, including paresthesias of all fingers. He identified a nocturnal component to claimant's pain.

Dr. Hufford examined claimant and diagnosed work-related overuse syndrome of the upper extremities, including bilateral rotator cuff syndrome with a right rotator cuff tear and surgical repair; bilateral medial and lateral epicondylitis and bilateral carpal tunnel syndrome. He opined the prevailing factor for the bilateral rotator cuff pathology, bilateral epicondylitis of the elbows and bilateral carpal tunnel syndrome is repetitive overuse in the course of her employment with respondent. In regard to the bilateral carpal tunnel syndrome, he opined other factors such as claimant's age, gender and diabetes also contributed.

Dr. Hufford found no evidence that claimant's work caused injury or impairment to her cervical spine and any pain which she experienced in the cervical spine would be a function of referred pain from her bilateral shoulder injuries. Dr. Hufford rated claimant with a 20 percent right upper extremity functional impairment and a 21 percent lift upper extremity impairment which combined to an overall whole person impairment of 23 percent, of which none was assigned to the cervical spine. The doctor also assigned restrictions.

Since her July 31, 2015, settlement claimant has been receiving injections in the back of her neck and continues to take medication prescribed for the cervical spine and upper extremities. Claimant would like authorization for Dr. Cayme to perform the recommended treatment for her neck.

Claimant confirmed she told Dr. Hufford she had no upper extremity or neck symptoms prior to her employment with respondent. Claimant received treatment for her cervical spine with Dr. Hearon in June 2011 and has had problems with her neck ever since.

Claimant met with Rodrigo Cayme, M.D., on August 31, 2015, seeking treatment. Claimant advised Dr. Cayme her main complaint was neck pain that radiated through her bilateral shoulders and upper extremities. Dr. Cayme diagnosed neck pain/cervicalgia; myofascial neck pain; cervical neuritis; cervical facet syndrome; and shoulder pain. Claimant was given an injection for the cervical trigger points and work restrictions.

Claimant next saw Dr. Cayme on October 9, 2015. She reported headaches and neck pain worse than her bilateral shoulder and arm pain. Dr. Cayme wrote claimant had ongoing mechanical neck pain with associated cervicogenic headaches, diagnosing neck pain, myofascial pain; cervical spondylosis; and facet syndrome of cervical spine. Claimant's medication was changed and she was given another injection.

In a letter dated November 9, 2015, Dr. Cayme wrote it was his impression the prevailing factor for claimant's current symptomatology is like due to aggravation of preexisting conditions and is likely not related to the May 26, 2011, work injury. Dr. Cayme testified he came to this conclusion because, after reviewing Dr. Hufford's IME, he found no mention of actual neck pain causing headaches during the original work-related injury, which is completely separate from his exam. He also noted some overlap with the myofascial trigger points that were still present.

Dr. Cayme continues to treat claimant and last evaluated her on April 13, 2016. Dr. Cayme indicated that if claimant had a work-related condition to her shoulders, the neck pain that comes from the shoulders would also be considered work-related.

PRINCIPLES OF LAW AND ANALYSIS

K.S.A. 2011 Supp. 44-501b(b)(c) states:

- (b) If in any employment to which the workers compensation act applies, an employee suffers personal injury by accident, repetitive trauma or occupational disease arising out of and in the course of employment, the employer shall be liable to pay compensation to the employee in accordance with and subject to the provisions of the workers compensation act.
- (c) The burden of proof shall be on the claimant to establish the claimant's right to an award of compensation and to prove the various conditions on which the claimant's right depends. In determining whether the claimant has satisfied this burden of proof, the trier of fact shall consider the whole record.

K.S.A. 2011 Supp. 44-508(e)(f)(1)(2)(A) states:

- (e) "Repetitive trauma" refers to cases where an injury occurs as a result of repetitive use, cumulative traumas or microtraumas. The repetitive nature of the injury must be demonstrated by diagnostic or clinical tests. The repetitive trauma must be the prevailing factor in causing the injury. "Repetitive trauma" shall in no case be construed to include occupational disease, as defined in K.S.A. 44-5a01, and amendments thereto.
- In the case of injury by repetitive trauma, the date of injury shall be the earliest of:
- (1) The date the employee, while employed for the employer against whom benefits are sought, is taken off work by a physician due to the diagnosed repetitive trauma;
- (2) the date the employee, while employed for the employer against whom benefits are sought, is placed on modified or restricted duty by a physician due to the diagnosed repetitive trauma;
- (3) the date the employee, while employed for the employer against whom benefits are sought, is advised by a physician that the condition is work-related; or
- (4) the last day worked, if the employee no longer works for the employer against whom benefits are sought.
- In no case shall the date of accident be later than the last date worked.
- (f) (1) "Personal injury" and "injury" mean any lesion or change in the physical structure of the body, causing damage or harm thereto. Personal injury or injury may occur only by accident, repetitive trauma or occupational disease as those terms are defined.
- (2) An injury is compensable only if it arises out of and in the course of employment. An injury is not compensable because work was a triggering or precipitating factor. An injury is not compensable solely because it aggravates, accelerates or exacerbates a preexisting condition or renders a preexisting condition symptomatic.

- (A) An injury by repetitive trauma shall be deemed to arise out of employment only if:
- (i) The employment exposed the worker to an increased risk or hazard which the worker would not have been exposed in normal non-employment life;
- (ii) the increased risk or hazard to which the employment exposed the worker is the prevailing factor in causing the repetitive trauma; and
- (iii) the repetitive trauma is the prevailing factor in causing both the medical condition and resulting disability or impairment.

The evidence supports the findings by the ALJ that the work injury is not the prevailing factor for the cervical injections being provided by Dr. Cayme. Dr. Cayme, the one providing the injections, stated the prevailing factor for claimant's current symptoms is an aggravation of her preexisting conditions, and not related to the May 26, 2011, work injury. The denial of medical treatment for a separate cervical spine injury is affirmed. The Order of the ALJ authorizing treatment for claimant's neck pain, which results from her shoulder injuries, is affirmed.

Conclusions

Having reviewed the entire evidentiary file contained herein, the Board finds the Award of the ALJ should be affirmed.

AWARD

WHEREFORE, it is the finding, decision and order of the Board that the Post-Award Medical Award of Administrative Law Judge Gary K. Jones dated May 31, 2016, is affirmed

IT IS SO ORDERED.	
Dated this day of August, 2016.	
	BOARD MEMBER
	BOARD MEMBER
	BOARD MEMBER

c: Robert R. Lee, Attorney for Claimant fdesk@ksworkcomplaw.com rob@leegurneyhess.com

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Gary K. Jones, Administrative Law Judge